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SEP 24 2010

OFFICE OF PETITIONS

In re Patent No. 7,664,651
Issued: February 16, 2010
Application No. 09/684,866
Filed: October 6, 2000
Attorney Docket No.
PSTM0038/MRK/STM

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH UNDER 35 USC §154(b)(3)(B)(ii) filed on May 18, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting correction of the patent term adjustment indicated on the above-identified patent.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED** to the extent indicated herein.

The term of the above-identified patent is extended or adjusted by one thousand one hundred fifty-one (1151) days.

On March 24, 2010, patentee filed a Request for Recalculation of Patent Term Adjustment in View of Wyeth. On April 21, 2010, the Office mailed a decision granting the petition under 37 CFR 1.705(d) to the extent that a certificate of correction would be issued indicating that the term of the patent was extended or adjusted by 1180 days.

The Office notes that the decision of April 21, 2010, was issued in error as it accorded patentee 29 more days of patent term adjustment than were warranted. Accordingly, the decision of April 21, 2010, is withdrawn. The present decision supersedes the decision mailed on April 21, 2010.

On September 1, 2009, the above-identified application matured into US Patent No. 7,582,313 with a patent term adjustment of 199 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 CFR 1.705(d). Applicants direct the office to the Notice to File Missing Parts mailed December 7, 2000 and the response filed April 5, 2001 with a two month extension of time. Applicant argues that Applicant argues that no Applicant Delay was

accorded for this reply and submit that the late response should have been accorded a total Applicant Delay of 29 days for delay from March 8, 2001 (the day after the date that is three months after the date on which the Notice to File Missing Parts was mailed), to April 5, 2001. See 37 C.F.R. § 1.704(b).

A review of the record reveals that the determination of patent term adjustment of 1180 days is incorrect.

Pursuant to 37 CFR 1.704(b), a period of reduction of 1151 days should have been entered. 37 CFR 1.704(b) provides that:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

In this instance, a Notice to File Missing Parts was mailed December 7, 2000 and a reply, was not received in the Office until April 5, 2001. Pursuant to § 1.704(b), the patent term adjustment should have been reduced by an additional 29 days for applicant delay from March 8, 2001 to April 5, 2001, the date of filing of the reply to the Notice.

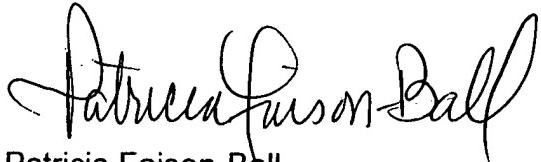
The Office has determined that the patent term adjustment for the above-identified patent is 1151 days. The 29 additional days of adjustment will be removed.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the

term of the above-identified patent is extended or adjusted by **one thousand one hundred fifty-one (1151) days.**

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,664,651 B1
DATED : February 16, 2010
INVENTOR(S) : David Allison Bennett

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1180) days

Delete the phrase "by 1180 days" and insert -- by 1151 days--